

REMARKS/ARGUMENTS

Applicant hereby affirms the election of claims for further prosecution in this case made during the January 9, 2007, telephone conversation with Examiner Grosso. Thus, claims 2 and 3 are withdrawn from consideration in this application and claims 1 and 4 through 6, inclusive, are elected for prosecution in the instant application.

35 U.S.C. ¶102

Turning now to the rejection of claim 1 under 35 U.S.C. ¶102(b) over R.B. Spiro United States Patent No. 5,390,812 granted February 21, 1995, for “Wastebasket Liner Removal Device”, attention is invited to the amendments to claim 1 that are submitted in this response. Illustratively, amended claim 1 now recites:

A waste receptacle having a base and at least two lateral sides integral with the base and extending therefrom...the base and the sides each forming an associated individual recessed housing to accommodate a respective one of said foot pedals within said associated individual recessed housing,....

In contrast with applicant’s specifically recited “at least two lateral sides integral with the base and extending therefrom”, Spiro ‘812 describes only “...a frame fastened to the bottom of the wastebasket...” (Spiro ‘812, Col. 2, lines 58 and 59). Nowhere in Spiro ‘812 is there even a suggestion of the integral wastebasket sides and bottom forming housings each to accommodate a respective foot pedal that characterizes applicant’s claimed structure.

Spiro ‘812, apart from failing to disclose or even to suggest applicant’s recited structure also teaches in an entirely different direction from applicant’s claimed invention. To a person of ordinary skill in the art and displaying the pedestrian creativity of the mere routineer, an advance in a wastebasket structure is to be found in the direction of improvements in the frame 8 (Spiro

'812, Fig. 1) and not in applicant's complete disregard of this separate frame dictate of the prior art. Thus, consider the following passage, quoted from Spiro '812, Col. 3, lines 18 to 23:

It is another object of the present invention to provide a wastebasket liner removal device which can be attached to a wastebasket *without having to form a recess in the side or sides of the wastebasket, or without having to cut a recess into the side or sides of the wastebasket.* (Emphasis supplied)

In the very words of Spiro '812, a person with the limited creativity of one of ordinary skill in the art is not only directed to an add-on frame, but also is specifically warned against applicant's claimed recessed housings formed by the waste receptacle's integral base and sides.

Accordingly, applicant respectfully submits that the Spiro '812 reference fails to show salient structural features that characterize amended claim 1 and, as a consequence, the rejection of amended claim 1 under 35 U.S.C. §102 over Spiro '812 should be withdrawn.

35 U.S.C. §103

Claims 4 through 6 which each depend directly or indirectly on independent claim 1 distinguish patentably over Spiro '812 for the reasons advanced above with respect to the rejection of claim 1 under Section 102.

Contrary to the statement in the first sentence in Paragraph 8 of the February 5, 2007 Official Action, Spiro '812 does not disclose the claimed invention or the subject matters of depending claims 4, 5 and 6. In view, moreover, of the statement in Spiro '812, Column 3, lines 18 to 23 quote above and repeated in part below, that the Spiro '812 apparatus provides:

...a wastebasket liner removal device which can be attached to a wastebasket
without having to form a recess in the side or sides of the wastebasket...

it is difficult to understand how any person of ordinary skill in the art could find a suggestion of the recessed housing formed in the lateral sides and integral base of applicant's claimed waste

receptacle. To so reject this clear prior art teaching an artisan of ordinary skill would have to not only completely disregard the clear warning in Spiro '812 but also to work in an entirely different and forbidden direction.

Alternatively, to apply the structure of Spiro '812 in a manner that would meet the limitations characterizing claims 4, 5 and 6, it would be necessary to completely redesign the Spiro '812 structure with the knowledge supplied by applicant's own teaching. How can applicant's claims be rejected on the basis of applicant's own teaching without violating a fundamental rule of patent law?

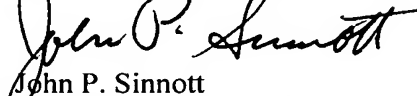
As a result, the Examiner is respectfully requested to withdraw the rejection of depending claims 4, 5 and 6 under 35 U.S.C. ¶103 in view of Spiro '812.

In summary, claims 2 and 3 have been withdrawn from consideration, subject to applicant's right to file a divisional application directed to the subject matter of non-elected claims 2 and 3. The rejection of claim 1 under 35 U.S.C. ¶102 in view of Spiro '812 should be withdrawn in view of specific teaching in Spiro '812 to avoid recesses in the side or sides of the wastebasket, which in contrast is a salient feature of claim 1. The rejection of claims 4, 5 and 6 (which depend on claim 1) under 35 U.S.C. ¶103 also fails for similar reasons. In the absence of applicant's own teaching, it would not be possible for a person with the creativity expected of one of ordinary skill in the art to apply the structural features recited in depending claims 4, 5 and 6 to the entirely different structure of Spiro '812.

Accordingly, early allowance of claims 1, 4, 5 and 6 now standing in this application is earnestly solicited. The Examiner is urged, moreover, to telephone applicant's counsel at the number noted below if it will advance the prosecution of this case.

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Respectfully submitted,



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